In the High Court of Judicature at Madras

Dated: 13/02/2004

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The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.R. SINGHARAVELU

Civil Miscellaneous Appeal No.928 of 1996

K. Subramoniam
Proprietor
Thangam Theater
Nagercoil. .. Appellant

vs.

1. The Employees State Insurance
Corporation rep. by its
Regional Director
Regional Office
143 Sterling Road, Madras 34.

2.The Deputy Regional Director
The Employees State Insurance
Corporation,
1-B, Old Post Office Street,
Tallakulam, Madurai 625 002.

3. The Insurance Inspector Employees State Insurance Corp.,
45/2A High Road, Tirunelveli. .. Respondents

Civil Miscellaneous Appeal is filed under Section 82 of the
Employees State Insurance Act, 1948 against the order and decree dated
24.04.1996 passed in ESIOP.No.5 of 1990 on the file of Principal District
Judge, Kanniyakumari at Nagercoil.

!For appellant : Mr. G. Ananthakrishnan
for M/s. T.S. Gopalan & Co.,

^For respondents : Mr. Jayakumar
for M/s. Radha Srinivasan ..

:JUDGEMENT
(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The petitioner in ESIOP.No.5 of 199 0 on the file of Principal District Judge, Kanniyakumari at Nagercoil is the appellant in the above appeal.

2. For convenience, we shall refer the parties as arrayed before the Court below.

3. The petitioner, who is a proprietor of Thangam Theater has filed the said petition before the District Court under Section 75 (1) and 77 of the Employees State Insurance Act, 1948 (in short "the E.S.I. Act"), praying that his establishment is not covered under the provisions of the E.S.I. Act and not liable to pay any contribution to the respondents. In support of the said claim, the petitioner has examined as many as six witnesses as Pws.1 to 6 and marked Exs.A.1 to A.69 in support of their claim. On the side of the Employees State Insurance Corporation (in short "E.S.I. Corporation"), they examined their Officer by name Meenakshi Sundaram as RW.1 and marked Inspection Report dated 09.0 1.1990 as Ex.B.1. The learned Principal District Judge, on consideration of oral and documentary evidence, refused to accept the case of the petitioner, consequently, dismissed the petition. Hence, the present appeal before this Court.

4. Heard the learned counsel for the appellant as well as respondents.

5. After taking us through the order of the learned Principal District Judge, the learned counsel appearing for the appellant submit that though the Inspection Report dated 09.01.1990 P Ex.B.1 refers 20 persons under employment with the petitioner, in this appeal, he is concerned with the order passed in so far as five Carpenters, ranked in Serial No.15 to 19. Accordingly, we are not concerned with persons ranking 1 to 14 and 20 in Ex.B.1. In the light of the limited issue, there is no need to refer all the factual details which are applicable to 20 employees.

6. According to the learned counsel appearing for the appellant, Serial No.15 to 19 never worked as Carpenter with the petitioner Concern and the voucher dated 01.08.1989 annexed with Ex.B.1 does not support the stand taken by the Insurance Inspector, E.S.I. Corporation, Tirunelveli. A perusal of the voucher annexed with Ex.B.1 specifically refers Carpenters P 5 Numbers. It further shows that a sum of Rs.1,090/- was paid as wages to them on 01.08.1989. It also shows that the said amount had been debited in the account of Thangam Theater, Nagercoil P petitioner.

7. RW.1 is the E.S.I. Inspector, who inspected the petitioner's establishment, namely, Thangam Theater on 10.01.1990. The fact that RW.1 had inspected the establishment on the said date is not in dispute. It is the evidence of RW.1 that at the time of his inspection, 14 persons were actually found working in the Theater, another 2 persons were found working in the theater and 2 persons in the Canteen. According to him, on verification of the records produced by the petitioner, it was noticed that on 01.08.1989, more than 20 persons were employed in petitioner's establishment. His enquiry revealed that 14 persons were employed in the Theater; 5 persons were employed

for doing maintenance work; one person is doing painting work and two persons were employed in the Canteen. Ex.B.1 is the Inspection Report prepared by RW.1. RW.1 has also produced xerox copy of the voucher, which is annexed along with Ex.B.1. Based on the same, the respondents have claimed that from 01.08.1989 the petitioner establishment is liable to pay contribution as per the provisions of E.S.I. Act.

8. No doubt, on the side of the petitioner, the Proprietor of Thangam Theater was examined as PW.1 and 5 more persons as Pws.2 to 6. As said earlier, we are concerned with 5 Carpenters. Hence, we are not referring the statement made by witnesses with reference to others. PW.6 - Assistant Manager of Thangam theater had deposed that one Jayakumar has stitched cushion to the chairs and the same had done at the shop of Murugan, who had actually manufactured the chairs. He admitted in cross examination that additionally 191 seats were added during the year 1989 and the chairs were manufactured by the Carpenter Murugan within 1 ? months., Though PW.1 and PW.6 specifically dispute the claim made in Ex.B.1, as rightly observed by the learned Principal District Judge, inasmuch as RW.1 after gathering various particulars from the documents produced by the petitioner at the time of his inspection, prepared his Inspection Report Ex.B.1, there is nothing to disbelieve the contents of the same as well as his evidence as RW.1. RW.1 had only discharged his official duty by making an inspection and prepared the report Ex.B.1, based on the materials / ledgers produced by the petitioner, in order to bring the petitioner establishment under the coverage of E.S.I. Act.

9. It is also seen from the order impugned that on appreciation of oral and documentary evidence let in by both side, after accepting the evidence of RW.1 and Ex.B.1 , the learned Principal District Judge came to a specific conclusion that the carpentry work was being done in the theater itself. In the light of the stand taken by the petitioner, we also perused all the relevant documents, including voucher, Ex.B.1, evidence of PW.1, PW.6 and RW.1 and we are satisfied that RW.1 has prepared his report - Ex.B.1 only on the basis of the records maintained by the petitioner. Since the respondents, particularly RW.1 has established their stand by giving adequate reasons and materials, the learned Principal District Judge rightly approved the same, we are of the view that there is no need to refer the decisions relied on by the learned counsel appearing for the appellant. When the facts are clear, there is no need to traverse to the decisions. Inasmuch as interference by this Court as per Section 82 (2) of the E.S.I. Act, is only on substantial question of law, in the light of the above discussion and of the fact that the learned Principal District Judge considered and confirmed the factual conclusion arrived at by the Officers of the E.S.I. Corporation, we do not find any valid ground to disagree with the same. On the other hand, we are in agreement with the said conclusion. Consequently, the appeal fails and the same is dismissed. No costs.

Index: Yes
Internet: Yes

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To
1. The Prl. District Judge
Kanniyakumari at Nagercoil.

2. The Record Keeper
V.R. Section, High Court,
Chennai.